



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

September 13, 2004

REGISTERED MAIL
RR 359 893 142 US

Melissa Adams
BP Cherry Point Refinery
4519 Grandview Road
Blaine, Washington 98230

RE: **Order # 1628** -U.S. Army Corps of Engineers # 200300692- Water Quality Certification for filling 11.27 acres of wetlands in waters of the state to construct a materials storage area.

Dear Ms. Adams:

The request for certification for proposed work in and adjacent to waters of the state has been reviewed. On behalf of the State of Washington, we certify that the proposed work, as conditioned by the enclosed Order, will comply with applicable provisions of Sections 301, 302, 303, 306 and 307 of the Clean Water Act, as amended, and other appropriate requirements of State law. This letter also serves as the State response to the Corps of Engineers.

This certification is subject to the conditions contained in the enclosed Order, which you should read and understand prior to beginning construction. There are numerous dates of compliance in Section B of the Order that are mandatory and should be noted. If you have any questions, please contact Susan Meyer at (425) 649-7168. Written comments can be sent to her at the Department of Ecology, 3190 – 160th Ave. SE, Bellevue, WA 98008. The enclosed Order may be appealed by following the procedures described in the Order.

Sincerely,

Jeannie Summerhays
Section Manager
Shorelands and Environmental Assistance Program

Enclosure

JS:SM:rc

cc: Corps of Engineers – Randel Perry
URS Corporation – David Every



IN THE MATTER OF GRANTING A)	ORDER # 1628
WATER QUALITY)	Corps Reference # 200300692
CERTIFICATION TO)	Construction of materials storage areas north and
BP Cherry Point Refinery)	south of Brown Road on BP property. The
in accordance with 33 U.S.C. 1341)	project involves filling 11.27 acres of wetland to
FWPCA § 401, RCW 90.48.260,)	construct lay-down areas, access roads, and a
RCW90.48.120 and Chapter 173-201A)	stormwater facility in Whatcom County,
WAC)	Washington.

TO: Melissa Adams
 BP Cherry Point Refinery
 4519 Grandview Road
 Blaine, Washington 98230

On October 3, 2003, a public notice for issuance of a water quality certification from the State of Washington was distributed by the U.S. Army Corps of Engineers for the above-referenced project pursuant to the provisions of 33 U.S.C. 1341 (FWPCA§ 401). The proposed project involves construction of laydown areas to store large equipment necessary for refinery operations, associated access and maintenance roads, and a stormwater treatment and detention facility.

Mitigation for permanently filling 11.27 acres of wetland is proposed on land north of Grandview Road across from the impact site. Mitigation consists of restoring the hydrologic flow patterns and planting native species on at least 22 acres of wetlands in the same subbasin where the impacts are proposed. The approximately 22-acre mitigation site is within a larger 94.2-acre area of hydrologic restoration involving ditch plugging and spreading treated and detained stormwater overland instead of within confined, roadside ditches. Native plant species will be installed in selected areas approximately a year after implementing the hydrologic restoration activities to allow time to monitor and observe hydrologic patterns.

For purposes of this Order, the term "Applicant" shall mean BP Cherry Point Refinery and its agents, assigns, and contractors.

AUTHORITIES:

In exercising authority under 33 U.S.C. 1341, RCW 90.48.260 and RCW 90.48.120, the Department of Ecology (Ecology) has investigated this application pursuant to the following:

1. Conformance with applicable water quality-based, technology-based, and toxic or pretreatment effluent limitations as provided under 33 U.S.C. Sections 1311, 1312, 1313, 1316, and 1317 (FWPCA Sections 301, 302, 303, 306, and 307);
2. Conformance with the state water quality standards as provided for in Chapter 173-201A WAC authorized by 33 U.S.C. 1313 and by Chapter 90.48 RCW, and with other appropriate requirements of state law; and,

3. Conformance with the provision of using all known, available and reasonable methods to prevent and control pollution of state waters as required by RCW 90.48.010.

CONDITIONS OF ORDER # 1628 AND WATER QUALITY CERTIFICATION:

In view of the foregoing and in accordance with 33 U.S.C. 1341, 90.48.260 RCW, 90.48.120 RCW and Chapter 173-201A WAC, water quality certification is granted to BP Cherry Point Refinery subject to the following conditions:

A. No Impairment of Water Quality:

- A1. Terrell Creek, located in WRIA 1, is a Class AA water of the state. Certification of this proposal does not authorize the applicant to exceed applicable state water quality standards (Chapter 173-201A WAC) or sediment quality standards (Chapter 173-204 WAC). Water quality criteria contained in WAC 173-201A-030(1) and WAC 173-201A-040 shall apply to this project, unless otherwise authorized by Ecology. This Order does not authorize temporary exceedances of water quality standards beyond the limits established in WAC 173-201A-110(3). Furthermore, nothing in this certification shall absolve the applicant from liability for contamination and any subsequent cleanup of surface waters or sediments occurring as a result of project construction or operations.

B. Project Mitigation:

- B1. Impacts to aquatic resources shall be mitigated through measures described in the following documents, except as modified by this Order:
 - *Final Mitigation Plan Brown Road Materials Storage Area*, dated May 6, 2004 prepared by URS Corporation.
 - *Mitigation Area Hydrologic Monitoring Work Plan Brown Road Materials Storage Area*, dated November 21, 2003 prepared by URS Corporation.
 - *Habitat Management Plan Brown Road Materials Storage Area*, dated April 29, 2004, prepared by URS Corporation.
- B2. In addition to conditions contained in the above-referenced documents, the following requirements shall be conditions for wetland mitigation:
 - A revised Final Mitigation Plan shall be submitted for review and approval by Ecology within 60 days of the date of this certification. The revised plan shall include the hydrologic performance standards agreed to by Ecology and the Corps of Engineers on September 9, 2004. The performance standards shall read as follows:
 1. Surface flow and storage will be considered restored in areas where surface gauges or monitoring wells demonstrate an increase in inundation level of 10 %

or more or an increase in duration of inundation of 10 % or more over baseline conditions by year 10 after mitigation construction is complete. Inundation level and duration will be relative to pertinent meteorological conditions (mainly precipitation) to facilitate comparison between baseline and post-mitigation data. Areas where surface flows and storage are restored will include areas that are currently inundated for less than one month per year as well as areas that are seasonally inundated (inundated for at least one month per year).

2. Subsurface flow and storage will be considered restored in areas where monitoring wells demonstrate an increase in groundwater level of 10% or more or an increase in duration of 10% or more over baseline conditions by year 10 after mitigation construction is complete. Groundwater level and duration will be relative to pertinent meteorological conditions (mainly precipitation) to facilitate comparison between baseline and post-mitigation data. Areas where this standard applies will only include areas that are not claimed under the surface flow standard.

Any revisions to these performance standards shall be subject to review and approval by Ecology.

- Planting Plan: A final planting plan for Planting Section 2 (PS2) shall be submitted to Ecology for review and approval once hydrologic conditions have been observed for a year post construction. The plan shall be submitted for review no later than October 31, 2006. Planting of PS2 shall occur no later than March 2007 and the 10-year monitoring period for this area shall not commence until all proposed plantings in PS2 have been installed. A request for an extension of this date must be made in writing to Ecology, with explicit reasons for the delay.
- Wetland Hydrology: No additional areas of permanent ponding shall be created in any location on the 94.2-acre mitigation area, and no additional hard structures such as weirs or other flow control devices shall be installed in the mitigation area, except at the existing WDFW ponds.
- Fertilizers: Any fertilizer used on the mitigation site shall be placed in the planting hole in upland areas only. Fertilizer shall not be broadcast on the soil surface.
- Natural Areas Management Plan: A Natural Areas Management Plan shall be developed by the Applicant as described on Page 31 of the *Final Mitigation Plan* (May 6, 2004) in coordination with Whatcom County. A draft of the plan shall be completed and submitted to Ecology's Susan Meyer no later than December 31, 2005.
- Excess Wetland Mitigation: At Ecology's request, the Applicant agreed to expand the mitigation area so that a landscape scale hydrologic restoration approach could be used to mitigate the impacts from this project. As a result, there will be additional area of wetlands with increased functions over current conditions that are likely to be

available to mitigate for future BP project impacts. The amount of excess mitigation available for future projects will be dependent on several factors, including but not limited to the type and extent of wetland impacts, the functions being lost, and the success of mitigation efforts for this site. Future available mitigation area will be based on performance standards met during the monitoring program, and may not be known until 5-10 years post construction.

- **"As-Built" Report:** An "as-built" report documenting the final design of the mitigation area shall be prepared when site construction and planting is completed. The report shall include the following:

- Vicinity map showing site access;
- Final site topography;
- Drawings that shall clearly identify the boundaries of the mitigation areas;
- The installed planting scheme showing densities, sizes, and locations of plants (in PS1), as well as plant sources and the time of planting;
- Photographs of the area taken from permanent reference points;
- Locations of photopoints, sampling and monitoring sites;
- An analysis of any changes to the mitigation plan that occurred during construction.

A copy of the "as-built" reports shall be sent to Ecology's Susan Meyer at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, within 60 days of completing construction and initial planting of PS1, and in no case later than May 30, 2006.

- **Deed Restriction:** Permanent protection of the wetland mitigation and preservation area shall be recorded on the appropriate property deed. The deed shall clearly indicate that the wetland mitigation and preservation areas are "waters of the state." Documentation that this requirement has been fulfilled, including copies of permanent restrictive easements, shall be provided to Ecology's Susan Meyer at the same time as the "as-built" report.
- **Field Supervision:** The mitigation area grading activity and plant installation shall be field-supervised by URS Corporation or other qualified consultant(s) to ensure proper elevations are achieved and plants are appropriately placed.
- **Monitoring:** Monitoring shall be conducted as identified in the Final Mitigation Plan. Monitoring shall take place over a period of ten years, with monitoring performed in years 1, 2, 3, 5, 7 and 10 for each Planting Section. Copies of all monitoring reports shall be submitted to Ecology at 3190 – 160th Avenue SE, Bellevue, WA, 98008-5452, as well as to the U.S. Army Corps of Engineers. **The Corps of Engineers reference # 200300692 shall be displayed on the cover of each Monitoring Report.**

- Maintenance: BP Cherry Point Refinery is responsible for mitigation area access restrictions and maintenance of the wetland mitigation site such that the required performance standards are met.
- Access: BP Cherry Point Refinery shall provide access to the mitigation site upon request by Ecology personnel for site inspections, monitoring, and necessary data collection to ensure that the wetland construction and monitoring plans are implemented as approved.

C. Stormwater Management:

- C1. The Applicant shall comply with the stormwater management plan, contained in *Brown Road Material Storage Area – Stormwater Design Report*, dated January 2004, prepared by URS Corporation, or as finalized.

D. Construction:

- D1. Construction Stormwater and Erosion Control: During construction, the Applicant shall comply with all stormwater requirements within the Stormwater General Permit for Construction Activity issued for this project or any individual Stormwater discharge permit Ecology may issue in the future for this project.
- a. Work in or near waters of the state shall be done so as to minimize turbidity, erosion, and other water quality impacts. Construction stormwater, sediment and erosion control Best Management Practices suitable to prevent exceedances of state water quality standards (*e.g.*, hay bales, detention areas, filter fences, etc.), shall be in place before starting clearing, filling, and grading work at the impact sites, and shall also comply with all requirements of the NPDES Permit.
 - b. Prior to clearing and grading in wetlands, the adjacent wetlands shall be protected from construction impacts. Construction fencing or flagging (using brightly colored tape at no less than twenty-five foot (25') intervals) of the existing wetlands and stream channels to be protected shall be completed prior to clearing. All project staff shall be trained to recognize construction fencing or flagging that identifies wetland boundaries. Equipment shall not be moved into or operated in wetlands or stream channels that are not authorized to be filled.
- D2. During clearing and filling at the project site, the Applicant shall take all necessary measures to minimize the alteration or disturbance of existing wetland and upland vegetation.
- D3. All construction debris shall be properly disposed of on land so that it cannot enter a waterway or cause water quality degradation to state waters.

- D4. Wash water containing oils, grease, or other hazardous materials resulting from wash down of equipment or working areas shall be contained for proper disposal, and shall not be discharged into state waters or storm drains.
- D5. The Applicant shall provide notice to Ecology's Susan Meyer at least 3 days prior to the start of placing fill in wetlands or other waters of the state, and within 7 days after completion of construction at the project site and mitigation site. Notification can take place by e-mail to sumc461@ecy.wa.gov, telephone to (425) 649-7168, fax to (425) 649-7098, or in writing.
- D6. Clean Fill Criteria: The Applicant shall ensure that fill placed for the proposed project does not contain toxic materials in toxic amounts.

E. Emergency/Contingency Measures:

- E1. In the event the Applicant is unable to comply with any of the permit terms and conditions due to any cause, the applicant shall:
- Immediately take action to stop, contain, and clean up unauthorized discharges or otherwise stop the violation and correct the problem.
 - Notify Ecology of the failure to comply. Spill events shall be reported immediately to Ecology's 24-Hour Spill Response Team at (425) 649-7000, and within 24 hours to Ecology's Susan Meyer at (425) 649-7168.
 - Submit a detailed written report to Ecology within five days that describes the nature of the violation, corrective action taken and/or planned, steps to be taken to prevent a recurrence, results of any samples taken, and any other pertinent information.

Compliance with this condition does not relieve the applicant from responsibility to maintain continuous compliance with the terms and conditions of this Order or the resulting liability from failure to comply.

- E2. Fuel hoses, oil drums, oil or fuel transfer valves and fittings, etc., shall be checked regularly for drips or leaks, and shall be maintained and stored properly to prevent spills into state waters. No refueling of equipment shall occur over, or within 50 feet of creeks or wetlands.

F. General Conditions:

- F1. This certification does not exempt and is provisional upon compliance with other statutes and codes administered by federal, state, and local agencies.

- F2. The applicant will be out of compliance with this certification if the project is constructed and/or operated in a manner not consistent with the project description contained in the Public Notice for certification, or as otherwise approved by Ecology. Additional mitigation measures may be required through other local, state, or federal requirements.
- F3. The applicant will be out of compliance with this certification and must reapply with an updated application if five years elapse between the date of the issuance of this certification and the beginning of construction and/or discharge for which the federal license or permit is being sought.
- F4. The applicant will be out of compliance with this certification and must reapply with an updated application if the information contained in the JARPA or Public Notice is voided by subsequent submittals to the federal agency. Any future action at this project location, emergency or otherwise, that is not defined in the JARPA and Public Notice, or has not been approved by Ecology, is not authorized by this Order. All future actions shall be coordinated with Ecology for approval prior to implementation of such action.
- F5. Copies of this Order shall be kept on the job site and readily available for reference by Ecology personnel, the construction superintendent, construction managers and foremen, and state and local government inspectors.

To avoid violations or non-compliance with this Order, the applicant shall ensure that project managers, construction superintendents, and other responsible parties have read and understand relevant aspects of this Order, the NPDES permit if applicable, and any subsequent revision or Ecology-approved plans.

The Applicant shall provide to Ecology a signed statement from each project manager and construction superintendent working at the project and mitigation sites that they have read and understand the conditions of the above-referenced permits, plans, and approvals. These statements shall be provided to Ecology no less than seven (7) days before construction begins at the project and mitigation site.

- F6. The applicant shall provide access to the project site and the mitigation site upon request by Ecology personnel for site inspections, monitoring, necessary data collection, or to ensure that conditions of this Order are being met.
- F7. Nothing in this Order waives Ecology's authority to issue additional orders if Ecology determines further actions are necessary to implement the water quality laws of the state. Further, Ecology retains continuing jurisdiction to make modifications hereto through supplemental order, if additional impacts due to project construction or operation are identified (e.g., violations of water quality standards, downstream erosion, etc.), or if additional conditions are necessary to further protect the public interest.

- F8. Liability: Any person who fails to comply with any provision of this Order shall be liable for a penalty of up to ten thousand dollars (\$10,000) per violation for each day of continuing noncompliance.

Appeal Process:

Any person aggrieved by this Order may obtain review thereof by appeal, within thirty (30) days of receipt of this Order, to the Washington Pollution Control Hearings Board, P.O. Box 40903, Olympia, WA 98504-0903. Concurrently, a copy of the appeal must be sent to the Department of Ecology, Shorelands and Environmental Assistance Program, P.O. Box 47600, Olympia, WA 98504-7600. These procedures are consistent with the provisions of Chapter 43.21B RCW and the rules and regulations adopted thereunder.

Dated 9/13/04 at Bellevue, Washington.



Jeannie Summerhays, Section Manager
Shorelands and Environmental Assistance Program
Department of Ecology
State of Washington